

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO,

Debtor.¹

PROMESA
Title III

No. 17 BK 3283-LTS
(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO HIGHWAYS AND
TRANSPORTATION AUTHORITY (“HTA”),

Debtor.

PROMESA
Title III

No. 17 BK 3567-LTS

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the “Commonwealth”) (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17- BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

DECLARATION OF WILLIAM J. NATBONY IN SUPPORT OF REPLY IN SUPPORT OF MOTION OF ASSURED GUARANTY CORP., ASSURED GUARANTY MUNICIPAL CORP., AMBAC ASSURANCE CORPORATION, NATIONAL PUBLIC FINANCE GUARANTEE CORPORATION, AND FINANCIAL GUARANTY INSURANCE COMPANY FOR RELIEF FROM THE AUTOMATIC STAY, OR, IN THE ALTERNATIVE, ADEQUATE PROTECTION

I, WILLIAM J. NATBONY, declare as follows:

1. I am Counsel at the law firm of Cadwalader, Wickersham & Taft LLP, attorneys for Assured Guaranty Corp. and Assured Guaranty Municipal Corp., in the above-captioned case. I respectfully submit this declaration in connection with the *Reply in Support of Motion of Assured Guaranty Corp., Assured Guaranty Municipal Corp., Ambac Assurance Corporation, National Public Finance Guarantee Corporation, and Financial Guaranty Insurance Company for Relief from the Automatic Stay, or, in the Alternative, Adequate Protection*, dated April 30, 2020 (the “HTA Reply”) on behalf of the Movants.

2. Submitted herewith are true and correct copies of the following numbered exhibits referred to in the HTA Reply. To the extent exhibits were previously cited in the Movants’ initial supporting papers, they were given lettered exhibit designations in my initial declaration of January 16, 2020 submitted in support of the Motion and the HTA Reply will refer to those lettered exhibits. Bates numbers appearing below correspond to documents produced by the Commonwealth (“CW”) or the Puerto Rico Highways and Transportation Authority (“HTA”) in connection with the discovery ordered by the Court in connection with the HTA Lift Stay preliminary hearing issues.

3. On April 23, 2020, the Government Parties and Ambac Assurance Corporation, Assured Guaranty Corp., Assured Guaranty Municipal Corp., National Public Finance Guarantee Corporation, Financial Guaranty Insurance Company, The Bank of New York Mellon, and U.S. Bank Trust National Associations executed a stipulation entitled “Stipulation Regarding

Authenticity of Documents in Connection with Lift-Stay Motion” (the “Authenticity Stipulation”). Attached hereto as Exhibit 67 is a true and correct copy of the Authenticity Stipulation. The Authenticity Stipulation provides that (subject to certain exceptions) no party to the Authenticity Stipulation will “contest the authenticity of any” document under Rule 901 of the Federal Rules of Evidence if the document bears, *inter alia*, the Bates prefix “CW_STAY” or “HTA_STAY.” See Ex. 67 at 3. The Authenticity Stipulation also provides that (subject to certain exceptions) the parties will not dispute that produced documents authored or otherwise created by the Government Parties or certain third-party banks meet the requirements of Federal Rules of Evidence 803(6)(A)-(D). *Id.* at 4.

Exhibit	Description
1	2012 Commonwealth Financial Statement
2	2015 CW Financial Statement, CW_STAY0009784-10167
3	2016 CW Financial Statement, CW_STAY0010168-10543
4	Act No. 75 of June 23, 1965
5	Act No. 43 of June 21, 1971
6	Act No. 5 of Oct. 8, 1987
7	Act No. 24 of June 20, 1970
8	TSA Cash Flow for October & November FY2018, CW_STAY0000229-242
9	2020 TSA Cash Flow for the month of January FY20, CW_STAY0000914-933
10	TSA Cash Flow as of March 8, 2019
11	TSA Cash Flow as of July 14, 2017, CW_STAY0000409-421
12	TSA Cash Flow for the month of October FY20, CW_STAY0000859-878

13	English Translation of Excerpts from Joint Resolution 87-2007 (with Certified English Translation)
14	Puerto Rico Public Finance Corporation 2003 Series A Bonds Official Statement
15	<u>Porto Rico. Telephone Co. v. Tax Ct.</u> , 81 D.P.R. 982 (1960) (English Translation)
16	<i>Asignación</i> , MCGRAW-HILL'S SPANISH AND ENGLISH LEGAL DICTIONARY (2003)
17	<i>Disponer</i> , MCGRAW-HILL'S SPANISH AND ENGLISH LEGAL DICTIONARY (2003)
18	PRHTA 1977 Highway Revenue Bond Series L Official Statement, HTA_STAY0008154-8218
19	_PRHTA Resolution 2003-23, Authorizing 2003 Revenue Refunding Bonds Series AA, HTA_STAY0002741-2846
20	<u>Roig Commercial Bank v. Buscaglia</u> , 74 D.P.R. 986 (1953) (English Translation)
21	Ahlberg Deposition Transcript from April 21 and 23, 2020
22	TSA Cash Flow as of September 15, 2017, CW_STAY0000500-515
23	<u>Hernandez Torres vs. Hernandez Colon</u> , 129 D.P.R. 824 (Certified English Translation)
24	PRHTA Budget Recommendations Memorandum for Fiscal Year 2014-2015, HTA_STAY0000387-402 (with Certified English Translation)
25	PRHTA Budget Recommendations Memorandum for Fiscal Year 2015-2016, HTA_STAY0000403-416 (with Certified English Translation)
26	Letter from Carmen A. Villar Prados to Jose M. Orta Valdez dated June 13, 2016, HTA_STAY0000417-453 (with Certified English Translation)
27	Spreadsheet Tracking Fund 278 for Fiscal Year 2014-2015, HTA_STAY0000207 (Monoline Exhibit 14 at the Ahlberg Deposition)
28	HTA_STAY0028471-474 (Treasury letter to HTA's auditors referring to the Fund 278 "accounts that the Authority maintains in this Department") (with Certified English Translation)
29	Transfer Authorizations dated January-March 2015, HTA_STAY0000467-492 (with Certified English Translation)
30	Transfer Authorizations dated March-May 2015, HTA_STAY0000454-466 (with Certified English Translation)
31	Transfer Authorizations dated June 2015, HTA_STAY0000493-512 (with Certified English Translation)
32	<u>HTA_STAY0000513-515 (including payment voucher signed by César M. Gandiaga Texidor, HTA's then Assistant Executive Director)</u> (with Certified English Translation)
33	Transfer Authorizations dated May-June 2015, HTA_STAY0000516-531 (with Certified English Translation)
34	Transfer Authorizations dated July-October 2015, HTA_STAY0000532-545 (with Certified English Translation)

35	Transfer Authorizations dated July-August 2015, HTA_STAY0000546-549 (with Certified English Translation)
36	Transfer Authorizations dated January-June 2015, HTA_STAY0000556-602 (with Certified English Translation)
37	Transfer Authorizations dated December 2015-March 2016, HTA_STAY0000603-613 (Monoline Exhibit 17 at the Ahlberg Deposition (with Certified English Translation) (with Certified English Translation)
38	Transfer Authorizations dated March 2015-March 2016, HTA_STAY0000614-627 (with Certified English Translation)
39	Transfer Authorizations dated June 2015-December 2016, HTA_STAY0000628-653 (with Certified English Translation)
40	Transfer Authorizations dated November 2014-July 2016, HTA_STAY0007985-8024 (with Certified English Translation)
41	Treasury Circular Letter 1300-01-99 (Monoline Exhibit 10 at the Ahlberg Deposition) (with Certified English Translation)
42	Letter signed by Cesar M. Gandiaga as Assistant Executive Director for HTA dated December 4, 2014, HTA_STAY0028880-8900 (with Certified English Translation)
43	Spreadsheet Tracking Fund 278 from 2015-2020, HTA_STAY0008372 (Monoline Exhibit 18 at the Ahlberg Deposition)
44	COFINA Master Trust Indenture, dated as of February 12, 2019
45	Cash Flow charts relating to HTA Excise Taxes and Tolls prepared by Commonwealth and HTA 30(B)(6) witness and marked as Monoline Exhibit 13 at the Ahlberg Deposition
46	Transfer Activity Report dated May 2, 2016, HTA_STAY0001027-30
47	Transfer Activity Report dated June 1, 2016, HTA_STAY0001031-34 (with Certified English Translation)
48	Spreadsheet Tracking HTA Revenues 2017-2020, HTA_STAY00000001
49	TSA Cash Flow for First Quarter FY2018, CW_STAY0000297-309
50	<u>Porrata Doria v. Fajardo Sugar Co.</u> , 57 D.P.R. 628 (1940) (Certified English Translation)
51	<u>Compania Popular de Transporte v. Dist. Ct. of Bayamon</u> , 63 D.P.R. 121 (1944) (English Translation)
52	<u>Luperena v. Transportation Authority</u> , 79 D.P.R. 464 (1956) (English Translation)
53	<u>Available, Oxford English Dictionary (2020)</u>
54	HTA Resolution 83-01
55	HTA Resolution 98-08

56	Transcript of Oral Argument for <u>Peaje Investments v. Garcia-Padilla, et. al.</u> , Case No. 16-2377 (1st Cir. January 4, 2017)
57	New Bond Legislation, Enacted in Conjunction with the COFINA Plan of Reorganization
58	<u>Librotex v. AAA</u> , 138 D.P.R. 938 (1995) (Certified English Translation)
59	<u>Commoloco de Caguas Inc. v. Benitez Diaz</u> , 126 D.P.R. 478 (1990) (Certified English Translation)
60	<u>Oronoz & Co. v. Alvarez</u> , 23 D.P.R. 536, 537-38 (1916) (Certified English Translation)
61	S. REP. NO. 100-506 at 6
62	H.R. REP. NO. 95-595 at 4
63	2 GAO, Principles of Federal Appropriations Law, p. 2-4 to -5 (4th ed. 2016)
64	Resolution 2003-30, HTA STAY0004323-4475
65	H.R. REP. NO. 100-1011 at 6
66	March 13, 2020 Letter from Elizabeth McKeen
67	Authenticity Stipulation

4. I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge, my review of the public record and based upon information provided to me by the parties to the Motion for which the HTA Reply is submitted.

Dated: April 30, 2020
New York, New York

By: /s/ William J. Natbony
William J. Natbony, Esq.*

CADWALADER, WICKERSHAM & TAFT
LLP
200 Liberty Street
New York, New York 10281
Telephone: (212) 504-6000
Facsimile: (212) 504-6666
Email: bill.natbony@cwt.com

* Admitted *pro hac vice*

*Attorneys for Assured Guaranty Corp. and
Assured Guaranty Municipal Corp.*